

IN THE MATTER OF

A complaint against **WR, OP & [redacted]** made under ss 73 & 74 of the Private Security Personnel and Private Investigators Act 2010

HEARD virtually on 17 August 2023

APPEARANCES

Kaitlyn Petterd (no appearance)

WR

OP

Ron McQuilter

DECISION

1. This complaint is dismissed.

REASONS

- [1] Kaitlyn Petterd filed a complaint against WR and OP, and the company they are both directors of: [redacted]. Her complaint related to the way they conducted an employment investigation of her actions on instruction by her employer in June 2023. This decision explains why her complaint is dismissed.

A preliminary note on evidence

- [2] Both parties filed comprehensive written submissions of an opposing nature, and as such the matter was heard by way of audio-visual hearing. Immediately prior to the hearing, Ms Petterd contacted the Authority and advised she could not access the link provided to her for the hearing and requested another link. She also included a long email of submissions. In response to this email, she was provided with another link to access the hearing, advised she could join the hearing at any time, and advised she could alternatively join by telephone. Ms Petterd did not respond to this.
- [3] Given the technical difficulties Ms Petterd alluded to, I directed that she be telephoned by Registry to allow her to attend the hearing that way. Her phone was switched off. I am satisfied that Ms Petterd was given every opportunity to attend the hearing of her complaint however appears to have chosen not to.
- [4] As Ms Petterd did file a submission of evidence to be heard in lieu of her oral evidence, this decision is based on her written evidence.
- [5] Mr WR and Mr OP both attended the hearing and gave oral evidence in support of their written submissions. They have also filed a transcript and the original audio recording of the meeting at issue which has been taken into account.

- [6] Mr McQuilter attended the hearing as an independent industry expert. He was not paid for his services but provided a report and oral submissions in an effort to assist the Authority and the industry. Mr McQuilter is a Justice of the Peace, a long-term investigator, previous Chair of the New Zealand Institute of Private Investigators (NZIPI)¹, Life Member of NZIPI and holds various relevant qualifications. He is well versed in providing such expert evidence. I accept that he has no bias in this matter, I accept his credentials and place due weight on his view.

The complaint

- [7] Ms Petterd's complaint contained a number of allegations of unsatisfactory conduct and/or misconduct and/or gross negligence² in the behaviour of Mr WR and Mr OP during their investigation of her. I address each of those separately in this decision.
- [8] Mr WR and Mr OP submit that Ms Petterd's complaint is not made in good faith and say it is frivolous and/or vexatious. They are of the view she is attempting to distract attention from her wrongdoing which was the subject matter of the investigation and is now being investigated by the Police.
- [9] Sections 73(4)(d) and 74(4)(d) of the Private Security Personnel and Private Investigators Act 2010 (the Act) are the relevant sections this complaint is made pursuant to. Section 4 defines the relevant terms as follows:

misconduct, means conduct by a licensee or certificate holder that a reasonable person would consider to be disgraceful, wilful, or reckless or conduct that contravenes this Act or any regulations made under this Act

unsatisfactory conduct, means—

- (a) conduct that falls short of the standard that a reasonable member of the public is entitled to expect from a reasonably competent licensee or certificate holder; or
- (b) conduct that is incompetent or negligent; or
- (c) conduct that would reasonably be regarded by private security personnel or private investigators of good standing as being unacceptable.

Was the investigation conducted impartially?

- [10] Ms Petterd alleges that Mr WR is a friend of her former employer as he told her so in their introductory phone call. She says this makes him inappropriate to conduct an investigation on his behalf and accordingly biased.
- [11] Mr WR agrees that he did advise her he was a friend of her former employer's when he disclosed he was conducting an investigation for him. He says he misused the term and is not a friend as he has never met the man in person, he was just speaking casually. He says they have mutual friends which is how his services were obtained. He is categorical that the investigation was conducted impartially.

¹ For 17 years

² Pursuant to s73(4)(d) of the Act

- [12] Mr WR did explain the level of his relationship, being purely professional, to Ms Pettered in the interview. The recording of the interview clearly indicates that she was satisfied with that explanation and continued voluntarily with the interview after receiving it.
- [13] I accept Mr WR's submission and whilst I agree his use of the word 'friend' was unfortunate, I am satisfied that he did not have a special relationship with Ms Pettered's former employer and as such no allegation of bias has been established. I consider it disingenuous of Ms Pettered to bring this as a matter of complaint after the situation had been explained to her and she had accepted that explanation. This ground is dismissed.

Was Ms Pettered coerced into attending the meeting?

- [14] Ms Pettered says she was coerced into attending the meeting on the 2nd of June by Mr WR telling her that if she did not attend, he would forward the matter to the Police.
- [15] Mr WR's submission is that he did tell her that he was instructed to forward the matter to the Police however if she engaged in a meeting, that may be able to be avoided. He says he was clear on the phone call prior and at the meeting that she did not need to engage with them.
- [16] Mr McQuilter makes the following comment on the point: "*I cannot accept, having listened to the interview and considering the events immediately post interview, that the complainant was placed under any undue pressure or stress.*"
- [17] I do not find it established in evidence that there was any substantial level of pressure placed on Ms Pettered to attend the meeting. Mr WR provided Ms Pettered with the facts of his instruction, and she was clearly told that she did not need to attend the meeting. The matter has in fact been referred to the Police. Accordingly, this ground is dismissed.

Was the venue appropriate?

- [18] Ms Pettered's submission is that the meeting venue of a hotel suite was inappropriate and made her feel uncomfortable. She says she had previously worked at the hotel and had left under difficult circumstances, and she says she felt coerced into meeting with them in such an improper venue.
- [19] Mr WR's account is different. He says he offered to come to Ms Pettered's home, but she refused and chose a local café to meet at. When Mr WR arrived at the café, he realised it was inappropriate as it was small, crowded and noisy. No level of privacy was possible to discuss the sensitive matters they had. As such he went directly across the road to a hotel to ask about a meeting room. They did not have one but referred him to the library. He checked there but again they had no private spaces. He therefore rented a suite at the hotel.
- [20] Both Mr WR and Mr OP say that they saw no sign of discomfort from Ms Pettered whatsoever when they suggested the hotel room. They say she came willingly

with them and at no point did she say she did not wish to go with them. In fact they propped the door open for the meeting but she asked them to close it to afford them privacy. The recording of the meeting supports this submission.

- [21] I also do not find this ground of complaint made out. The hotel was an appropriate meeting space, Ms Pettered had every opportunity to leave or not attend, the door was intended to be left open and the meeting was recorded. This ground is dismissed.

Was the process rushed?

- [22] Ms Pettered says the process was too rushed for her to obtain a support person or be adequately prepared which made it unfair.

- [23] Again, I do not accept this submission. The Investigators were investigating a live issue including an alleged fraud that was occurring at the time; they therefore had to act with urgency. Ms Pettered did not need to attend the meeting and was told she could have a support person. She did in fact ostensibly consult a lawyer prior to the meeting and was aware of the matters of investigation from her emails from her employer, the phone call with Mr WR, and the letter from her employer prior to the meeting. Further, she signed a pre-interview statement that said she was aware she may have a support person, but chose not to.

- [24] Ms Pettered also says she did not realise the meeting was an investigation meeting until after she had agreed to attend. Mr WR is clear that he introduced himself to Ms Pettered as an investigator, told her the meeting was an investigation into her conduct with work monies and was clear regarding the nature of the meeting. Given Ms Pettered did not even attend the hearing, I assess Mr WR as more credible and accept his version of the conversation.

- [25] Accordingly, this complaint ground is also dismissed.

Was inappropriate language used?

- [26] Ms Pettered takes offence at being called a liar by Mr OP in an email. Mr OP did use the term lie when describe a falsehood Ms Pettered had told them, therefore his description was in fact accurate. He did not call her a liar, just pointed out that she had told them a lie. This was correct and came at a time after Ms Pettered had had told them several established untruths.

- [27] As part of this issue, Ms Pettered took further offence at them checking what she had said about her father being in hospital. She says that at a distressing time with her father being unwell, it was very upsetting to have them challenging her word. Her father had in fact been taken to hospital however not my helicopter as she had first told them.

- [28] Of the matter Mr McQuilter makes the following comment: "*Professional investigators operate under the principle of ABC, A = assume nothing, B = Believe nothing and C = Check everything.*" He says it was in following this process that it

was understandable, and in fact expected, for the investigators to check Ms Pettered's word as to why her involvement was to be delayed.

- [29] I consider it appropriate that Mr OP checked what Ms Pettered was saying as it was part of a fraud investigation and came after she had been established to have been telling an untruth about making a repayment. This ground is dismissed.

Was the recording appropriate?

- [30] Mr OP recorded the meeting starting from when they first walked into the hotel room. He says this is best and usual practice, particularly in a situation such as this with two men interviewing a single female. Ms Pettered takes issue with the recording starting prior to her being advised.

- [31] Ms Pettered was told of the recording and consented to it. The fact that the recording was started shortly before her consent was obtained, I do not accept as material. Mr McQuilter says that it was best practice for Mr OP to ensure that all times of them being alone in the room with Ms Pettered were recorded, and I agree. Ms Pettered took no issue with the fact of recording when she was advised, and it was important that the entire meeting be recorded to protect them all.

- [32] Accordingly, this ground is also dismissed.

Was it inappropriate for Mr OP to request Ms Pettered's bank statements?

- [33] During the meeting Mr OP requested to see Ms Pettered's bank statements on various occasions to substantiate her claims that she had not transferred work money into her account. She did eventually allow him such access but takes issue with the fact that she was asked, saying they had no jurisdiction to do so.
- [34] This was an investigative process established in an attempt to resolve the matter without Police intervention. Ms Pettered was entitled to involve herself to any level she wished. The evidence does not establish that she was pressured into providing her bank statements. This ground is dismissed.

Was the process generally appropriate?

- [35] Ms Pettered has questioned the process Mr OP and Mr WR employed in the undertaking of their investigation saying it was generally inappropriate, for example the fact the meeting was in person rather than online. I accept Mr WR's submission that online meetings are not appropriate for the nature of their meetings.
- [36] Ms Pettered also says Mr OP and Mr WR did not have authority to come to an agreement with her to resolve the matter with her making repayments. This is an issue between them, and their client and I am satisfied they did have authority to enter into settlement negotiations with Ms Pettered. They were in fact redundant given she did not keep to her agreement.

- [37] Mr McQuilter makes the following comment: *"best practice as a private investigator is to advise the interviewee that they are being interviewed by a private investigator, that the interviewer is not a member of law enforcement and that the interviewee can refuse to be interviewed and/or have a support person present. Certainly, in employment matters this pre-interview process is a must."* I agree with Mr McQuilter that both Mr OP and Mr WR adhered to this best practice.
- [38] Mr McQuilter also states: *"I cannot accept, having listened to the interview and considering the events immediately post interview, that the complainant was placed under any undue pressure or stress."*
- [39] In summary Ms Pettered claims the process involved bullying and harassment of her by Mr OP and Mr WR. I do not find this allegation substantiated in any way nor do I find any concern established regarding their process here as it relates to usual investigative practices. This ground is dismissed.

Was Mr WR's touching of Ms Pettered inappropriate?

- [40] Ms Pettered raised the issue in her submission on the day of the hearing, but not in her original complaint, that Mr WR put his hand on her. Mr WR agrees he did put a hand on her shoulder as they were saying goodbye on the street in an effort to comfort her that all would be resolved. It was brief, in public and done in an effort of support.
- [41] Mr McQuilter's view is that the touching was not inappropriate and was in fact kind and not out of the ordinary. I accept this submission and find it insincere of Ms Pettered to raise this at the time she did³.

Conclusion

- [42] Having assessed all of Ms Pettered's written submissions, Mr WR and Mr OP's oral and written submissions, Mr McQuilter's report and oral evidence, and having read the transcript and listened to the recording of the interview, I do not find any of Ms Pettered's claims made out.
- [43] I accept Mr McQuilter's assessment of the way the investigation was run as being in accordance with industry best practice. I am satisfied that Mr WR and Mr OP's conduct in this investigation was beyond reproach and find they both demonstrated their considerable years of experience.
- [44] I also am concerned at the motivation of Ms Pettered in making this complaint given her actions throughout the process. I consider her failure to attend the hearing in person disingenuous.
- [45] Accordingly, this complaint is dismissed.
- [46] This decision is to be published however I do not consider it in the public interest for the investigators' identifying details to be published given their lack of fault in this protracted and potentially insincere complaint against them.

³ At the hearing and not in the original complaint

DATED at Wellington this 18th day of August 2023



K A Lash
Deputy Private Security Personnel Licensing Authority